

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

BERT L. WEAVERLING
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-62
Case No. 68-1011

S.S.A. No.

DEPARTMENT OF HUMAN
RESOURCES DEVELOPMENT

The Department appealed from Referee's Decision No. S-15461 which held the claimant eligible for unemployment benefits for the one-week period December 3 through December 9, 1967 under the provisions of section 1253(c) of the Unemployment Insurance Code on the ground that during that week the claimant was available for work. Written argument was presented by the Department; none was received from the claimant. On our order an additional hearing was held in Marysville on July 1, 1968. Prior to this hearing, the parties were advised that testimony would be taken in regard to the issue of the claimant's eligibility for benefits under section 1253(e) of the Unemployment Insurance Code. The record of both hearings is now before this board. On August 8, 1968, on our own motion, we accepted as additional evidence a questionnaire completed by the business agent of Local No. 1570 of the Carpenters Union and a certified copy of Department Form DE 1101J Rev. 4, showing benefits paid to the claimant. Copies of these documents were served upon the parties.

STATEMENT OF FACTS

The claimant is a carpenter and a member of the Carpenters Union Local No. 1570 in Marysville, California. This local union is affiliated with the Northern California District Council of Carpenters. In 1960, representatives of the Department met with representatives of the Northern California District Council of Carpenters in order to work out procedures relative to unemployed carpenters who were

claiming unemployment benefits because the district council controlled, for all practical purposes, the only source of work for carpenters in the areas covered by the local unions affiliated with the district council. As a result of this meeting, the Department furnished to the various locals affiliated with the district council a "Notice of Unemployment Insurance" which reads in part as follows:

"This notice gives information on unemployment insurance requirements for union members.

"Special rules apply to union members when the union controls most of the hiring in an industry or trade. To be eligible for benefits, union members must follow all union regulations which include:

"1. Registering as 'out-of-work' with his union.

"2. Showing up and answering all roll calls.

"3. Showing up for dispatch and answering dispatch calls.

"4. Accepting suitable employment when notified by the union." (Emphasis added)

The rules of Local No. 1570 provide that unemployed members who desire to be dispatched to work as carpenters register with the local and place their names on the local's out-of-work list. Names of unemployed carpenters who are members of this local and are registered as out of work are placed on the list in accordance with the time they register with the union as unemployed. In order to maintain his place on the list, an unemployed carpenter must report to the local union for roll call, which is held commencing at 7:30 a.m. each Monday. If a member fails to meet roll call on Monday, his name is removed from its place on the out-of-work list and reinstated at the end of the list.

The rules of Local No. 1570 also permit (but do not require) unemployed members desirous of obtaining work to solicit work with employers for whom they have previously

worked within the last three years. If an employer desires to hire such a member, the member is dispatched to the employer regardless of the place at which his name appears on the out-of-work list.

The union rules permit (but do not require) unemployed carpenters to register in the variety of skills they may possess. That is, an unemployed carpenter may register as a finish carpenter, a framer, a construction carpenter, a commercial carpenter, etc.; and, when an order comes in for a specific skill, the member whose name appears first on the list in this specific skill will be dispatched to the job regardless of the position of his name on the out-of-work list. That is, if an order comes in for a finish carpenter and the name of a member who has registered as a finish carpenter appears fifteenth on the list, this member will be dispatched to this job in preference to those above him on the list who have not registered in this skill.

The claimant filed a claim for unemployment benefits effective June 4, 1967 in the Marysville office of the Department. When he filed his claim, he was furnished by the Department with a printed form entitled "Seek Work Plan," which informed the claimant as follows:

"The Unemployment Insurance Code requires an individual 'to make all reasonable effort' to secure work in order to be eligible for benefits. This work search should be reasonably directed toward finding work in the shortest period of time. In order to meet the eligibility requirements of the Unemployment Insurance law, you will be required to follow the plan checked below.

"1. Since you are a member of a Union that controls all (or almost all) job dispatching in your occupation, you are required - each week - to register with your Union and meet all Union requirements that pertain to or may affect your being dispatched onto a job. This includes meeting all Union dispatching 'calls' and registrations."

The claimant registered with his union as a carpenter-welder.

On Monday, December 4, 1967, because of transportation difficulties, the claimant was unable to report to his local union for roll call, and as a result, his name was dropped from number 80 on the out-of-work list to number 95. When the Department was informed of this fact, a determination was issued holding the claimant ineligible for benefits for the period December 3 through December 9, 1967 under the provisions of section 1253(c) of the code, because the Department concluded that the claimant was ". . . not considered available for that week."

Subsequent to filing his claim for benefits effective June 4, 1967, the claimant certified as totally unemployed for the weeks ended June 10, June 17 and June 24, 1967. He also certified as totally unemployed for 17 consecutive weeks from the week ended November 25, 1967 through the week ended March 16, 1968 and for the one week ended April 22, 1968.

REASONS FOR DECISION

Before deciding the specific question of the claimant's eligibility for benefits for the week commencing December 3, 1967, it is necessary, we believe, to address ourselves to certain other aspects of this case.

The Notice of Unemployment Insurance which was furnished the local unions by the Department contains grounds for misinterpretation where it points out that "special rules apply to union members."

Although the Department did not so intend it, we believe this statement, taken by itself, is at best misleading. We do not believe that the State Legislature in establishing the Unemployment Insurance Code contemplated that union members would be required to do any more or any less than any other unemployed claimant in maintaining eligibility for benefits. Had such been the intention of the legislature, we believe it would have so provided in the code, as it did in providing that special regulations would be established in regard

to part-totally employed individuals or partially unemployed individuals (code section 1252) or for commercial fishermen (code section 1252.1). Since there are no special provisions in the Unemployment Insurance Code relative to the eligibility of union members, we conclude that union members must meet the same requirements as any unemployed individual.

We likewise believe that the printed seek work plan involved herein, which is provided to certain union members, is also misleading as well as providing grounds for possible estoppel in the future when the seek work plan indicates that "In order to meet the eligibility requirements of the Unemployment Insurance Law" the claimant must register with his union and meet all union requirements that pertain to dispatch for work.

Turning our attention now to the immediate problem of the claimant's eligibility for benefits. Both the Department and the referee considered the claimant's eligibility under section 1253(c) of the Unemployment Insurance Code. This section provides that an unemployed individual is eligible for benefits with respect to any week only if he is available for work during that week. We believe that the Department and the referee were in error in considering this case under section 1253(c). While the claimant's failure to comply with the reporting requirements of the union did result in a loss of his position on the out-of-work list, it did not, on the facts of this case, affect his availability for work for that week.

We believe that the claimant's eligibility for benefits in this case should have been considered under code section 1253(e). For such reason we remanded the matter for an additional hearing after advising the parties that we intended to consider this issue.

Section 1253(e) of the Unemployment Insurance Code provides that an individual is eligible for benefits for any week only if:

"(e) He conducted a search for suitable work in accordance with specific and reasonable instructions of a public employment office."

The facts show that the instructions given to the claimant were to register with his union and meet all union requirements that pertained to or may affect his being dispatched to a job, including meeting all union dispatching calls and registrations.

In our opinion these instructions were specific and reasonable in view of the evidence that the claimant's union controlled practically all of the hiring in the claimant's occupation as a carpenter. The issue then is, what effect did the claimant's failure to answer the roll call of his union on December 4, 1967 have upon his eligibility for benefits under section 1253(e) of the code for the week in question? Can the claimant's failure to comply with these instructions in the one instance involved herein be excused? In our opinion it cannot.

The instructions given to the claimant by the public employment office required only that he report to his union hall to answer the roll call commencing at 7:30 a.m. on Monday, December 4, 1967. The claimant's failure to be present and respond to the roll call, no matter what his excuse may have been, means in effect that he made no search for work at all during that week. Clearly he was not in compliance with the reasonable instructions of the public employment office. Therefore, benefits must be denied under section 1253(e) of the code.

DECISION

The decision of the referee is modified. The claimant was ineligible for benefits under section 1253(e) of the code for the period December 3 through December 9, 1967.

Sacramento, California, December 18, 1969

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

DON BLEWETT

DISSENTING IN PART - Separate Opinion Attached

JOHN B. WEISS

SEPARATE OPINION

CONCURRING IN PART - DISSENTING IN PART

The Department and the referee resolved this case under section 1253(c) - the "availability" section of the code. My associates of the board believe this to be error, and prefer to reach their decision under section 1253(e) - the "instructions" section of the code. I agree with my associates of the board as to their disposition of the section 1253(e) issue, but I cannot agree that there is not also a section 1253(c) issue.

Section 1253(c) of the California Unemployment Insurance Code provides that an individual is eligible for unemployment insurance benefits for any week only if he is able to work and available for work for that week. This board in Benefit Decision No. 5015 held that an individual is available for work under this code section only if that individual is ready, willing and able to accept suitable work which he has no good cause to refuse and for which a reasonable opportunity exists in his labor market area, and further, without undue restrictions on the work he will accept either self-imposed or created by force of circumstances (emphasis added). In numerous decisions the Appeals Board has held that when a claimant is a member of a union which controls the bulk of work opportunities in the claimant's occupational classification, the claimant may be eligible for benefits and available for work only by strict compliance with the requirements of the union (Benefit Decisions Nos. 4888, 4987, 5014 and others).

Here the dispatching rules of the union controlling the claimant's work (the union to which the claimant belonged), followed a dispatching procedure of first on the list, first out. Failure to register in the prescribed manner results in the delinquent members being dropped to the bottom of the list. Here by his failure to report as prescribed, the claimant was dropped to the bottom of the dispatch list, and has thus unquestionably lengthened his period of unemployment. This loss of

dispatch status did therefore by force of circumstance affect the claimant's availability not only for the week in which he failed to register, but also for succeeding weeks until the claimant has regained his former position on the union dispatch list. For these reasons I would find that the claimant must be "unavailable" under section 1253(c) by force of circumstance until he regains his former position on the dispatch list. It follows that benefits must be denied accordingly.

John B. Weiss